

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

10,317

FILE: B-194624

DATE: May 30, 1979

MATTER OF: Mrs. Tony Zapata

[Protest of Government Surplus Item Award]

DIGEST:

Use of the term "all or none or by invitation"  
in bid for sale of two surplus items is  
ambiguous and bid so qualified was properly  
rejected. Allegation that language used  
was based on advice of agency employee does  
not alter conclusion bid was properly re-  
jected as Government is not responsible  
for erroneous actions of its employees  
even if committed in performance of official  
duties.

PN

Mrs. Tony Zapata protests the award of a Government  
surplus item to any other bidder, under invitation for  
bids (IFB) No. 31-9134, issued by the Defense Logistics  
Agency (DLA). 90C 0037P

Bids were opened on March 29, 1979. Mrs. Zapata's  
bid was for two items; \$512.26 for item 60 and \$1,088.88  
for item 61 (total \$1,601.14), with a notation that the  
bid was "all or none or by invitation." Other bids sub-  
mitted included \$1,029.99 for item 60 and \$1,039.99 for  
item 61 (total \$2,069.98). Mrs. Zapata's all or none bid  
was not high, and DLA proposed to award items 60 and 61  
to the bidders which resulted in the highest aggregate  
amount for these two items.

Mrs. Zapata protested to DLA contending that she  
intended her bid to mean "if I was higher on one of  
the all or none bids, by stating by invitation that I  
would be awarded the single high bid item." The pro-  
tester went on to state that she worded her bid in  
accordance with instructions she received in response  
to her telephone inquiry to a staff member at the  
agency's regional office. DLA denied Mrs. Zapata's  
protest.

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als hms 2

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Mrs. Zapata has protested to our Office on the ground that if her bid wording was improper, it was not her error, but that of the agency because of the erroneous advice she was given.

This case is one in which it is clear from the protester's initial submission that the protest is without legal merit. Under these circumstances we will decide the matter on the basis of this submission without requesting a report from the procuring agency pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20 (1978). Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91; Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290.

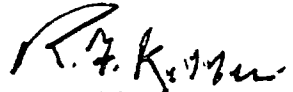
An all or none bid qualification normally evidences the bidder's intention to restrict the Government's right to make an award for a quantity less than the quantity offered at the unit prices offered. See General Fire Extinguisher Corporation, 54 Comp. Gen. 416, 419 (1974), 74-2 CPD 278. However, the addition of the phrase "or by invitation" to the all or none qualification in our view made the bid ambiguous. For example, we fail to understand why a bidder would seek an all or none qualification and then attempt to negate that qualification by an additional phrase, since the bid would have been considered on an item by item basis if no qualification had been used initially. In addition, if the bidder intended to have the benefit of the all or none qualification yet desired to negate its effect in circumstances such as occurred here, the addition of the phrase "by invitation" would not accomplish that purpose, since that phrase has no generally understood meaning of which we are aware. Where a bid is ambiguous, a bidder may not be permitted to explain its meaning of the bid intended since this would afford the bidder the opportunity to alter the responsiveness of its bid by extraneous material. See 49 Comp. Gen. 851 (1970). In our view, Mrs. Zapata's bid was properly rejected.

Moreover, the protester's claim that she proceeded in the manner described on the basis of advice allegedly received from an employee of DLA does not alter our conclusion that the bid should be rejected. We have long held that, in the absence of specific authority

therefor, the United States is not liable for the erroneous actions of its officers, agents, or employees, even though committed in the performance of their official duties. See 44 Comp. Gen. 337 (1964), and cases cited therein. Thus the protester is responsible for the wording of her bid, despite her alleged reliance on the instruction of an agency employee.

In this respect, the protester has also brought to our attention the alleged lack of clarity of clause 28 of the additional general information and instructions in the IFB. However, this clause, entitled "tie-in or all-or-none bids," relates only to wording which a bidder may use to have an all-or-none bid prorated in the event that the Government withdraws from sale, prior to award, any of the items covered by the bid. This language has no relation to the issue raised here by the protester.

The protest is summarily denied.

  
Deputy Comptroller General  
of the United States